

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE
THE TRADEMARK TRIAL AND APPEAL BOARD

76138226
In the matter of Registration Nos. 2,793,533, 2,634,215 and 2,735,848
Issued on December 16, 2003, October 12, 2002 and April 22, 2003, respectively

GLENN DANZIG, Petitioner, v. CYCLOPIAN MUSIC, INC., Registrant.	TTAB Cancellation No. _____
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United States Patent and Trademark Office
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

CERTIFICATE OF MAILING

I hereby certify that this correspondence and the identified enclosures are being deposited with the U.S. Postal Service as First Class mail, postage prepaid, in an envelope addressed to: United States Patent and Trademark Office, Trademark Trial and Appeal Board, P.O. Box 1451, Alexandria, VA 22313-1451 on 11-11-2005.

By: Robbie Jean Corbin

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PETITION FOR CANCELLATION

Glenn Danzig (hereinafter "Petitioner"), an individual having a primary business address of c/o Glenn B. Davis, Esq., Myman, Abell, Fineman, Greenspan, & Light, LLP, 11601 Wilshire Boulevard, Suite 2200, Los Angeles, CA 90025, believes he will be damaged by the continued registration of the marks **MISFITS** and **MISFITS** (Stylized), which are the subject of the following United States Trademark Registration Nos.: 2,793,533 for the mark **MISFITS** issued on December 16, 2003 for brooches, charms, costume jewelry, earrings, jewelry lapel pins, ornamental pins, and tie pins in International Class 14; 2,634,215 for the mark **MISFITS** issued on October 15, 2002 for musical sound recordings, prerecorded audio tapes and videotapes featuring recorded musical performances and music videos in International Class 9; for book covers, bumper stickers, comic books, fan magazines, namely, musical group fan magazines,



graphic art reproductions, posters, publications, namely, biographical and autobiographical books and magazines about members of the musical group, souvenir pamphlets about musical groups, and trading cards in International Class 16 and for musical entertainment, namely, live performances by a rock group, arranging and conducting rock concerts, rock music fan club services, providing musical entertainment programs for television and for the internet, and musical entertainment services, namely, providing rock music programming via television and the internet in International Class 41; and 2,735,848 for the mark **MISFITS** (Stylized) for musical sound recordings, prerecorded audio tapes and videotapes featuring recorded musical performances and music videos in International Class 9; for book covers, bumper stickers, comic books, fan magazines, namely, musical group fan magazines, graphic art reproductions, posters, publications, namely, biographical and autobiographical books and magazines about members of the musical group, souvenir pamphlets about musical groups, and trading cards in International Class 16, and hereby petitions to cancel the same.

Petitioner sets forth the following grounds for cancellation:

1. Petitioner was a founding member and lead vocalist of the world famous musical group the **MISFITS**.
2. Cycloplan Music, Inc. ("Registrant"), the owner of the subject registrations, is comprised of Mr. Gerard Caiafa and Mr. Paul Caiafa, two other members of the musical group the **MISFITS**.
3. Pursuant to a Settlement Agreement dated December 31, 1994, between Petitioner, Mr. Gerard Caiafa and Mr. Paul Caiafa, as well as Frank Licata and Julio Valverde (the other two remaining members of the **MISFITS**), Petitioner is a co-owner of the name and trademark the **MISFITS** and all artwork and logos associated therewith. Specifically, Paragraph 5 of the Agreement states: "The parties shall be co-owners of the name and trademarks of the

Misfits and all logo(s) and artwork (including all artwork used on Misfits releases for Slash, Caroline or Plan 9 Records) previously associated therewith."

4. In the registrations that are the subject of this proceeding, Registrant has claimed ownership of the exclusive rights in the marks the **MISFITS** and the **MISFITS** (Stylized) for the various goods and services set forth in those registrations.

5. The registrations that are the subject of this proceeding are invalid and were fraudulently obtained by Registrant, who falsely represented that it was the exclusive owner of the subject marks for the various goods and services contained therein.

6. Section 1(a) of the Lanham Act requires that the "owner" of a mark be the one to file the application to register it. Registrant is not the exclusive owner of the subject marks, but rather the principals of the Registrant are merely co-owners of the subject marks. Accordingly, it was improper for Registrant to seek registration of the subject marks in its name and the registrations that were issued on the basis of the underlying applications filed by Registrant are void.

7. If Registrant is allowed to maintain its registrations of the marks the **MISFITS** and **MISFITS** (Stylized), it will create the false impression that Registrant is the exclusive owner of the subject marks, which it is not.

8. The registrations owned by Registrant are therefore inconsistent with Petitioner's ownership interest in and to the **MISFITS** and **MISFITS** (Stylized) marks in connection with the goods and services set forth in the subject registrations. Accordingly, Petitioner is likely to be damaged by the continued maintenance of the registrations that are at issue in this proceeding.

WHEREFORE, Petitioner believes that he will be damaged by the continued registration of the subject marks and therefore prays that this Petition For Cancellation be granted, and that U.S. Reg. Nos. 2,793,533, 2,634,215 and 2,735,848 be cancelled.

Enclosed is check number 3575 in the amount of \$1,800 for the filing fees for this Petition. Please charge any deficiency in fees or credit any overpayment to Deposit Account No. 10-0440.

This petition for cancellation is being filed in triplicate by the undersigned attorneys at law, duly authorized to represent Petitioner in this proceeding, pursuant to Trademark Rule 2.101(b).

Respectfully submitted,

Dated: November 10, 2005

By: 

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